

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JAN 29 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

To: Chief, Common Carrier Bureau

COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL
ON REQUESTS FOR FURTHER WAIVERS
OF THE PAYPHONE-SPECIFIC DIGITS REQUIREMENT

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, DC 20037-1526
(202) 828-2226

Attorneys for the American Public
Communications Council

January 29, 1999

No. of Copies rec'd
List ABCDE

015

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JAN 29 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)
_____)

CC Docket No. 96-128

To: Chief, Common Carrier Bureau

COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL
ON REQUESTS FOR FURTHER WAIVERS
OF THE PAYPHONE-SPECIFIC DIGITS REQUIREMENT

Pursuant to the Common Carrier Bureau's Order, DA 98-2644, released December 31, 1998, the American Public Communications Council ("APCC") submits the following comments on the requests of GTE, Southern New England Telephone ("SNET"), Southwestern Bell ("SBC"), and U S West for further waivers of the payphone specific digits requirement of the Payphone Orders.¹

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order 11 FCC Rcd 20541 (1996); Order on Reconsideration, 11 FCC Rcd at 21233 (1996) (together the "Payphone Orders"). The Payphone Orders were affirmed in part and vacated in part. See Illinois Public Telecom. Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997); see also, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Second Report and Order, 13 FCC Rcd 1778 (1997); remanded, MCI Telecomm. Corp. v. FCC, No. 97-1675 (D.C. Cir. May 15, 1998).

STATEMENT OF INTEREST

APCC is a national trade association representing over 3,000 independent providers of pay telephone equipment, services, and facilities. APCC seeks to promote competitive markets and high standards of service for pay telephones. To this end, APCC has actively participated in all FCC proceedings addressing payphones and payphone compensation.

BACKGROUND

In the original Payphone Order, the Commission set a deadline of October 7, 1997, for all carriers to begin tracking compensable calls and paying per-call compensation for “each and every” compensable call. Subsequently, however, it developed that local exchange carriers (“LECs”) were not able to provide – for the “dumb” payphone lines serving the “smart” payphones used predominantly by independent PSPs -- the payphone-specific coding digits deemed necessary for per-call tracking by the October 7, 1997 effective date. The Bureau granted, on its own motion, a five-month waiver of the payphone-specific digits requirement. Order, 12 FCC Rcd 16387 (Com. Car. Bur. 1997). On March 9, 1998 the Common Carrier Bureau released an order clarifying, and granting additional temporary waivers of, the requirement that LECs use “FLEX ANI” to provide payphone-specific coding digits. Memorandum Opinion and Order, 13 FCC Rcd 4998 (Com. Car. Bur. 1998).² IXC’s, in turn, were allowed to delay payment of compensation

² SBC subsequently requested, and was granted, an additional waiver to allow SBC to address the same technical problems identified in SBC’s current waiver request. The Bureau declined to extend the waivers past December 31 1998, stated: “We do not anticipate granting any further extension of these waivers” Memorandum Opinion and Order, 13 FCC Rcd 11210, ¶¶ 22, 24 (Com. Car. Bur. 1998). SNET also asked for

on a per-call basis for payphones for which payphone-specific coding digits were not available. Memorandum Opinion and Order, 13 FCC Rcd 10893 (Com. Car. Bur. 1998), clarified, Order, 13 FCC Rcd 7303 (Com. Car. Bur. 1998). For all affected smart payphones, an IXC could elect to pay compensation on a flat-rate basis (based on its average per-call payments for RBOCs' dumb payphones), until the IXC began receiving payphone-specific coding digits from the LECs serving the payphones. Id. Alternatively, an IXC that was able to pay compensation for smart payphones on a per-call basis without relying on payphone-specific coding digits could elect to do so. Id.

As a result of these waivers, there has been a prolonged delay in the full implementation of per-call compensation. The deadlines for LEC deployment of payphone-specific coding digits have been repeatedly postponed, for periods ranging from eight to fifteen months.³ In fact, the actual delay in full implementation of per-call compensation is even longer, because IXCs are not required to begin tracking calls from affected payphones until the calendar quarter that begins 30 days after the deployment date. March 9 Order, ¶ 19, n.57, ¶ 24, n.65.

and was granted a one-month additional waiver due to a union work stoppage. Memorandum Opinion and Order, DA 98-1973, released October 1, 1998.

³ Most of the large LECs were required to complete implementation of payphone-specific coding digits by June 9, 1998; however, U S West, GTE and the smaller LECs were allowed additional time, until December 31, 1998, to complete deployment of payphone-specific coding digits.

The prolonged LEC waivers have contributed to an emerging pattern of utterly haphazard implementation of compensation payments by the major IXCs.⁴ AT&T, for example, is currently paying partly on a per-call and partly on a flat-rate basis. There is a serious lack of consistency in the payments AT&T is making from one quarter to another, and among similarly situated payphones. Other major carriers are paying on a per-call basis. With these carriers as well there are major and pervasive anomalies in payment patterns that cast great doubt on whether per-call tracking is being performed with any accuracy or consistency at all. At a minimum, the delays in implementation of Flex ANI introduce a major unknown variable that makes it extremely difficult to evaluate carriers' tracking and payment performance and to address problems effectively.

DISCUSSION

The Commission should not tolerate any further non-compliance with payphone-specific digit requirements. Virtually all the additional waivers requested are premised on two alleged problems: (1) problems with implementing FLEX ANI in tandem offices ("TOs"), in those cases where a LECs is not able to, or chose not to, implement FLEX ANI at the end office; (2) problems with implementing FLEX ANI for calls to toll-free numbers that are translated into POTS numbers. In some cases, the impact of these problems appears to be minor, but in others it is very substantial. The carriers have now had more than two years to implement the Payphone Order. Enough is enough.

⁴ Most smaller IXCs are still trying to avoid paying any compensation at all. APCC is proceeding with legal action against both nonpaying and underpaying IXCs.

Independent PSPs must not suffer as a result of these LECs' continuing errors. Therefore, the Commission must waive the payphone-specific digits requirement for independent PSPs. Where FLEX ANI digits remain unavailable, IXC's should continue to pay per-call or per-phone compensation for the affected payphones, as they have been pursuant to the Commission's prior orders. The Commission should deny any further waiver to any LEC that is not in compliance.⁵ Any waiver extensions that are granted must be conditioned on the LEC's agreement to hold each affected PSP harmless for any resulting shortfall in compensation.⁶ If a LEC rejects this condition, then the Commission should strictly enforce its rules against that LEC, imposing the maximum daily fine or forfeiture for each day of non-compliance.⁷

I. THE TANDEM OFFICE PROBLEM

A. Nature of the problem

The TO problem apparently occurs in areas where an EO does not itself have Flex ANI capability – either because there is a technical problem with that type of EO or because the LEC has decided to implement Flex ANI at the tandem level. The TO either does not have Flex ANI capability, or does not have the ability to “screen” calls to ensure that the IXC to which the call is routed has requested Flex ANI. If the IXC has not

⁵ Any further waivers should be granted only for violations that are truly *de minimis*.

⁶ If GTE rejects the condition, the Commission should impose daily fines at the maximum level for failure to comply.

⁷ APCC notes that, to the extent that problems can be addressed as discussed in Section I.B.6, some waivers may not be necessary.

requested Flex ANI, its network may not be prepared to received Flex ANI digits, and the call may be dropped or may not be tracked if it is transmitted with Flex ANI.

B. Impact on LEC compliance

1. GTE

GTE's TO problem arises primarily because GTE has chosen to implement Flex ANI *only* at the TO level, while other major LECs (i.e., the RBOCs) have implemented Flex ANI at the EO level. As a result, GTE claims that, where GTE EOs subtend an RBOC's TO, Flex ANI cannot be implemented because neither the EO nor the TO has the necessary modifications to provide Flex ANI.⁸ According to GTE, this problem affects "only" 7,864 smart payphones. An additional 792 smart payphones are affected by a related problem with GTE EOs connected to GTE's Lucent TOs, for a total of 8,656 smart payphones (apparently all provided by independent PSPs) that will not have FLEX ANI by the December 31, 1998 deadline. (None of GTE's dumb payphones are affected, because they do not need FLEX ANI in order to have payphone-specific digits.) Although GTE claims that this problem affects only 4.75% of the total number of payphones in its service area, the percentage of *independent* payphones in GTE's area that will not have payphone-specific digits is much larger – probably as much as 20% -25%. GTE states that this problem will not be completely resolved before June 30, 1999.

⁸ GTE does not indicate whether the problem with these TOs is the "screening" problem identified by other carriers, or whether it is more fundamental – i.e., a failure to deliver Flex ANI digits at all.

It would appear that GTE has little excuse for failing to coordinate its Flex ANI implementation strategy with other LECs so as to ensure that no payphones would be left without Flex ANI capability at both the EO and TO levels. However, the Commission should deny a waiver to GTE. Alternatively, if the Commission grants a waiver to GTE, it must be conditioned on GTE's agreement to hold PSPs harmless for any shortfall in the compensation they would otherwise receive.⁹

2. SNET

Like GTE, SNET has chosen to implement FLEX ANI only at the tandem level. SNET apparently does not face a problem with its EOs subtending other LECs' TOs. However, it did not obtain the necessary tandem screening functionality from its manufacturers in time to meet its deadlines. SNET claims that this problem prevents the implementation of FLEX ANI at 8% of smart payphones in its territory. Stating that smart payphones currently represent about 8% of total payphones served by SNET, SNET estimates that the payphones affected are about 0.6% of total payphones served by SNET. Given that SNET recently reported some 25,000 payphone lines, the number of payphones affected appears to be close to 200. However, since independent (i.e., smart) payphones were only recently allowed, the number of payphones affected may well increase.

⁹ If GTE rejects the condition, the Commission should impose daily fines at the maximum level for failure to comply.

3. SBC and U S West

Unlike GTE and SNET, SBC has implemented Flex ANI at the end office level wherever possible. SBC states that its TO problem arises only for a small number of SBC's EOs (serving 779 payphones, or less than 0.17% of the total), which cannot support Flex ANI. In those cases, the TOs serving the EO have Flex ANI capability, so that Flex ANI can be transmitted. However, SBC claims that its TOs currently cannot screen the calls in order to determine whether the IXC to which the call is routed has requested Flex ANI and prepared its network to receive Flex ANI. SBC claims the problem will be largely resolved with the replacement of its DMS 10s sometime in 1999.

4. U S West

U S West has a similar problem to SBC's. U S West claims that 219 payphone lines are affected, and that the problem will be resolved by March 31, 1999. U S West asks that "[t]o the extent the Bureau deems necessary," it should "treat this informational letter as a request for a temporary waiver. . . ." U S West 12/11/98 at 2.

5. Any waivers should be conditioned on the LEC's agreement to make PSPs whole

APCC does not believe an extension of waivers is warranted to address any of these problems, if the effect of the waiver is to prevent the availability of FLEX ANI on payphone lines. As noted in the Bureau's Order, some of these LECs are seeking waivers for the third or fourth time. Even in those cases where a relatively small number of payphones are affected, the problem is far from *de minimis* to the PSPs whose compensation is affected. Given the wide variations in the number of calls made from

payphones, requiring IXC's to pay flat-rate compensation is unlikely to result in fair compensation to the affected PSPs.

Therefore, if the tandem screening problem is not resolved as discussed in Section II.B.6. below, APCC urges the Commission to deny further waivers of the payphone-specific digits requirement. If any further waivers are granted, they must be conditioned on the LEC's express agreement to make whole each of the affected PSPs. In other words, if a PSP's total compensation received from IXC's on payphones subject to a further waiver during a calendar quarter is less than the total compensation that it would have received if FLEX ANI had been deployed (as demonstrated by reasonable estimates based on current or subsequently available data regarding call volume at the PSP's payphones), then the LEC must pay the PSP the difference between the total compensation that the PSP should have received and the total compensation that the PSP did receive.

6. SBC's proposed resolution

SBC states that the tandem screening problem can be handled in the short term (and apparently is being currently so handled by SBC) regardless of whether all IXC's have ordered FLEX ANI. SBC argues that the major IXC's are or should be requesting FLEX ANI anyway. Under this resolution, no waiver would be necessary, but it would be up to each IXC to properly process the calls. The FCC must require any other LEC's with tandem screening problems to do what SBC says is possible and implement FLEX ANI at the tandem without the screening.¹⁰ There should not be disparate resolution to this

¹⁰ It is not clear whether other LEC's have a tandem screening problem but have not come forward to request waivers.

problem by different LECs – inconsistent carrier implementation have caused far too much confusion already. Second, the Commission must explicitly direct IXC's to prepare to receive FLEX ANI by a date certain, and require the LECs to begin transmitting FLEX ANI to all IXC's on that date whether or not every IXC has "requested" it.

Such an order is necessary for other reasons as well. SBC's description of the screening problem and proposed solution highlights a serious problem in the implementation of Flex ANI by LECs and IXC's. As SBC complains, many IXC's appear to "pick and choose when and where they will request FLEX ANI." SBC 12/9/98 at 14.¹¹ APCC members constantly receive conflicting reports from LECs and IXC's regarding whether an IXC has ordered Flex ANI, and whether they are required to do so. LECs frequently claim that IXC's have failed to order Flex ANI. IXC's seem to take the position either (1) that they have ordered it, but it hasn't been provided, or (2) that they are not required to order it yet, if ever. The result is there is no agreement, and thus no certainty, about whether Flex ANI is currently "supposed to" be transmitted on a given payphone line. This is intolerable for PSPs, because they have no assurance that calls will be tracked and dial-around payments accurately made.

In those situations where screening cannot be performed, the problem is exacerbated. Where there is screening, it should be possible for the LEC to transmit "70" to carriers that have subscribed to Flex ANI and "07" to carriers that have not subscribed to Flex ANI, so that carriers that have not subscribed at least have the opportunity to track calls using "07". Where there is no screening, however, LECs cannot transmit Flex ANI selectively -- LEC must either not transmit Flex ANI to any IXC or transmit it to all IXC's

¹¹ U S West claims that AT&T has not yet ordered Flex ANI from it.

regardless of whether they have ordered it. If Flex Ani is transmitted to all IXC's, and some IXC's are not prepared to receive it, calls will be dropped or not tracked, and no compensation will be paid. If Flex ANI is not transmitted to any IXC, then fair compensation will continue to be denied to that PSP.

We believe the Bureau has the authority to require transmission and acceptance of FLEX ANI by all LECs and IXC's resolution, given the express requirements of the Payphone Orders. Once FLEX ANI is deployed, there is no valid reason why IXC's should not all be required to accept FLEX ANI digits, in order to ensure fully accurate tracking of compensable calls.

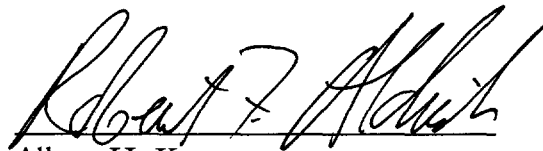
C. 800/POTS Problem

The 800/POTS problem appears to be relatively similar for all carriers (except that GTE does not mention that it has such a problem). All the LECs agree that it affects a small percentage of calls (e.g., less than 0.5% of payphone calls), and that it affects smart and dumb payphones alike. U S West claims it can fix the problem by 3/31/99 for Nortel switches, 6/30/99 for Lucent 5ESS switches, but that it cannot fix the problem for 1AESS switches until they are replaced in the 1999-2002 time frame. SBC has a later schedule for Nortel and 5ESS, and has the same general time frame for replacing 1AESS. However, SBC also has some 4ESS for which it is not known when, if ever, the problem can be fixed. Given that very common switch types are affected, the problem is likely to affect other LECs as well. It is unclear why other LECs have not reported this problem and requested waivers.

APCC does not believe this problem is *de minimis*. A problem that affects 0.5% of all payphone calls is likely to affect about 2% of dial-around calls (given that dial-around represents approximately 25% of payphone traffic). For those PSPs served by the problem switches, the problem is likely to affect a much higher percentage of their compensation. Further, the problem cannot be effectively addressed by per-phone compensation without depriving PSPs of fair compensation for unaffected calls. If the Commission grants a waiver, it should be of limited duration and should be conditioned on LECs holding PSPs harmless for any shortfall in compensation.

Dated: January 29, 1999

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich", written over a horizontal line.

Albert H. Kramer

Robert F. Aldrich

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP

2101 L Street, N.W.

Washington, D.C. 20037-1526

(202)828-2226

Attorneys for the American Public
Communications Council

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 1999, a copy of the foregoing Motion for Deferral of the Effective Date of the Payphone Order's Call Tracking Verification Requirement was delivered by first-class U.S. Mail, postage pre-paid to the following parties:

Anna Gomez
Federal Communications Commission
Room 230
2000 M Street, NW
Washington, DC 20554

Kurt Schroeder
Federal Communications Commission
Room 230
2000 M Street, NW
Washington, DC 20554

Robert M. Lynch
Roger Toppins
Jeffrey B. Thomas
Southwestern Bell Telephone Company
One Bell Plaza, Room 3043
208 South Akard Street
Dallas, TX 75202

Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, NW
Washington, DC 20036

Mark C. Rosenblum
Richard H. Rubin
AT&T Corporation
295 North Maple Avenue
Room 3252I3
Basking Ridge, NJ 07920

Lawrence E. Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

John F. Raposa
GTE Service Corporation
HQE03J27
600 Hidden Ridge
POB 152092
Irving, TX 75012-2092

Wendy Bluemling
The Southern New England
Telephone Company
310 Orange Street
New Haven, CT 06510-1806

James T. Hannon
US West, Inc.
Suite 5100
1801 California Street
Denver, CO 80202

Carl W. Northtrop
Emmett A. Johnston
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Avenue, NW
10th Floor
Washington, DC 20004-2400

Alan Buzacott
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Danny E. Adams
Steven A. Augustino
John J. Heitmann
Kelley Drye & Warren, LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036-2423

Dana Frix
Pamela S. Arluk
Swidler & Berlin
3000 K Street, NW, Suite 300
Washington, DC 20007-5116

Michael J. Shortley III
Frontier Corporation
180 S. Clinton Avenue
Rochester, NY 14646

Glenn B. Manishin
Michael D. Specht
Blumenfeld & Cohen
Technology Law Group
1615 M Street, NW, Suite 700
Washington, DC 20036

Mary L. Brown
George S. Ford
MCI Telecommunications
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Judith St. Ledger-Roty
Wendy I. Kirchick
Kelley Drye & Warren, LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036-2423

Rachel J. Rothstein
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Howard J. Symons
Sara F. Seidman
Yaron Dori
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, PC
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004-2608

James M. Smith
Excel Telecommunications, Inc.
1133 Connecticut Avenue, NW
Suite 750
Washington, DC 20036

Gary L. Mann
IXC Long Distance, Inc.
1122 Capital of Texas Highway South
Austin, TX 78746

Brad E. Mutschelknaus
Steven A. Augustino
Kelley Drye & Warren, LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036-2423

Lawrence G. Malone
New York State Dept. of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Robert L. Hoggarth
Personal Communications Industry
Assn.
500 Montgomery Street
Suite 700
Alexandria, VA 22314

Scott Blake Harris
Kent D. Bressie
Harris, Wiltshire & Grannis, LLP
1200 18th Street, NW, Suite 1200
Washington, DC 20036

Thomas Gutierrez
J. Justin McClure
Lukas, Nace, Gutierrez & Sachs
1111 19th Street, NW, Suite 1200
Washington, DC 20036

Thomas K. Crowe
Law Offices of Thomas K. Crowe, PC
2300 M Street, NW, Suite 800
Washington, DC 20037

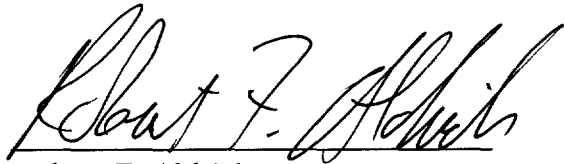
Micheal K. Kellogg
Aaron Panner
Kellogg Huber Hansen Todd & Evans
1301 K Street, NW
Suite 1000 West
Washington, DC 20005

Neil M. Peretz
PocketScience Inc.
2075 de La Cruz Boulevard
Suite 200
Santa Clara, CA 95050

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, NW, 11th Floor
Washington, DC 20036

Richard S. Whitt
WorldCom, Inc.
1120 Connecticut Avenue, NW
Suite 400
Washington, DC 20036

ITS
1231 20th Street, NW
Washington, DC 20036



Robert F. Aldrich